IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3027 OF 2003

Anil M. Deshmukh .. Applicant

Versus

Mukund S. Ranade & Anr. .. Respondents

Mr.Shailesh Kantharia for applicant

Mrs.M.H.Mhatre, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 24th August 2006.

P.C.

. Heard Mr.Kantharia for applicant

2. Applicant is an accused in case No.527 of 1997. First respondent is the original

complainant.

3. Offences alleged are under sections 166, 167, 303, 324, 341, 342, 352, 357, 504 and 506 of I.P.C. First respondent complainant has urged in the complaint that the applicant accused has come to one place where there was some conference and when he and others were leaving that place, the applicant accused along with other police constables directed that complainant and others should come to Ambad police station. Applicant thereupon has allegedly informed the complainant and others that their statements have to be recorded. However, they were made to wait for quite some time and the statements were not recorded.

4. In para 3 of the complaint it is alleged that the applicant accused assaulted the first respondent complainant who is a press reporter. The acts of assault have been specifically set

out in paras 3 to 5. The applicant has been accused of the aforesaid offences. Based upon the averments and allegations the aforesaid complaint is filed. So also, the complainant points out that the applicant assaulted him on account of which he suffered injuries for which treatment was given to him. Thus, by abusing and misusing the powers and the office that he was holding and deliberately preparing false records and lodging false chapter cases, so also assaulting and attacking the complainant with weapon, the aforesaid offences have been committed.

5. The only submission of Mr.Kantharia is that the Cr.P.C. under section 197 provides for prosecution of Judges and public servants. It is specifically stated therein that no court shall take cognisance of such offences which are committed by him while acting or purporting to act in discharge of his official duty, except

with previous sanction of the authority stipulated therein. In the present case, admittedly, no sanction is accorded. In such circumstances, cognisance cannot be taken of the complaint alleging above offences and the same is ex facie not maintainable and, continuance of proceedings would be an abuse of the process of Court. Even otherwise, to meet the ends of justice, when there is no sanction accorded, this is a fit case for exercise of powers under section 482 of Cr.P.C. Reliance is placed by the learned Counsel on a judgement in the case of Sankaran Moitra Vs. Sadhna Das and Anr., reported in (2006) 4 S.C.C. 584.

6. Since the complainant has remained absent despite service, with the assistance of Mr.Kantharia I have perused the petition and the original complaint. Provisions of Section 197 of Cr.P.C. are clear inasmuch as when any person who is a public servant and not capable of being

removed without the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duty, then no court shall take cognisance of such offences except with previous sanction of the authority stipulated therein. For the provisions to apply, it must be shown that the applicant is accused of any offence alleged to have been committed while acting or purporting to act in discharge of his official duty. The learned Additional Sessions Judge is right in his conclusion that in the facts and circumstances of this case, whether these ingredients are satisfied or not, will have to be established after evidence is led. Considering the averments in the complaint, prima facie, when the applicant has, along with other police constables, visited a place which was booked for holding a conference by workers' union and a political outfit and calling upon the persons, named in the complaint including the

complainant to report to the police station, it is not clear whether the applicant was visiting this place for investigating an offence as is alleged in the present application. In other words, the submission of Mr.Kantharia that the applicant went there because he was investigating a criminal case, cannot be accepted without necessary materials being produced and proved. For applicability of section 197 this will have to be done. The judgement of the Supreme Court is rendered considering the facts brought before it. The Supreme Court emphasised the necessity of previous sanction for taking cognisance. The judgement proceeds on the facts before the Supreme Court. There was no dispute that the applicant before the Supreme Court was indeed acting or purporting to act in discharge of his official duty. In such circumstances the judgement has been rendered. There is no dispute or quarrel about this proposition. The principle laid down is applicable. However, its

applicability depends on the facts and circumstances of each case. For the ingredients of section 197(1) to be satisfied, materials will have to be produced. Hence, I do not find any fault in the approach of the learned Additional Sessions Judge that such aspects can be gone into during the course of trial and depending upon that submission on the lack of previous sanction can be appreciated.

7. Hence, without the materials being produced on record, it is not possible to entertain the submission of Mr.Kantharia.

8. The application is, therefore, dismissed. However, dismissal of this application so also the order of the Sessions Judge shall not preclude the applicant from raising appropriate contentions and producing materials to raise plea of want of sanction. The same be considered without being influenced by either the

observations of the trial court or dismissal of this application.

(S.C.Dharmadhikari, J)